

PE1695/E

Petitioners' submission of 3 October 2018

WE VERY MUCH APPRECIATE THAT THE PPC TOOK OUR PETITION SERIOUSLY AND CONTACTED ALL OF THE ABOVE. HUMAN RIGHTS TOUCH ON A WIDE RANGE OF AREAS IN SCOTS LAW AND SOCIETY. "HUMAN RIGHTS ARE A CRUCIAL SAFEGUARD FOR PEOPLE IN SCOTLAND AND ARE BOUND INTO THE WAYS IN WHICH PUBLIC BODIES DISCHARGE THEIR DUTIES THROUGH THE PROVISIONS OF THE SCOTLAND ACT" IS AN EXTREMELY IMPORTANT STATEMENT. ALSO THE SUMMARY FROM THE TENTH REPORT OF THE JOINT COMMITTEE ON HUMAN RIGHTS. Eg "ACCESS TO JUSTICE IS FUNDAMENTAL TO THE RULE OF LAW".

IT IS OBVIOUS FROM ALL OF THE RESPONDING SUBMISSIONS THAT IT IS WIDELY RECOGNISED THERE ARE GAPS IN THE ACCESS TO JUSTICE IN RESPECT OF HUMAN RIGHTS, THEREFORE WE WISH TO MAKE THE FOLLOWING POINTS :-

1. WE APPRECIATE THAT, WITH REFERENCE TO HUMAN RIGHTS, THERE ARE PROPOSALS TO IMPROVE EDUCATION IN SCHOOLS, ACCESS TO INFORMATION, ACCESS TO LEGAL AID AND ACCESS TO OTHER FORMS OF FUNDING TO COVER THE COSTS OF CIVIL LITIGATION. Eg. CROWD FUNDING , GROUP PROCEEDINGS AND SUCCESS FEE AGREEMENTS. ALL OF WHICH WILL, HOPEFULLY, WHEN IMPLEMENTED, HELP CITIZENS IN THE FUTURE.
2. WE AGREE WITH THE SUGGESTION THAT A NEW FORUM COULD BE ESTABLISHED TO RESOLVE EQUALITY AND HUMAN RIGHTS DISPUTES SUCH AS A TRIBUNAL OR OMBUDSMAN, BUT AGAIN THAT WILL BE IN THE FUTURE.
3. HOWEVER, GIVEN THAT GOVERNMENT, WHETHER IN WESTMINSTER OR EDINBURGH, HAVE A LEGAL DUTY TO BOTH, PROTECT THE PUBLIC FROM ABUSE OF THEIR HUMAN RIGHTS AND ENSURE THOSE PEOPLE, WHOSE RIGHTS HAVE BEEN ABUSED, HAVE ACCESS TO JUSTICE - SURELY FLAWS IN THE SYSTEM SHOULD HAVE BEEN RECTIFIED SOONER. IT APPEARS, EVEN RECOMMENDATIONS FROM 2010 WERE NOT ENACTED. (IN OUR CASE THE CONCERNS OF OURSELVES AND OTHERS WERE CONTINUALLY DISMISSED AND WE WERE CONSISTENTLY TOLD WE HAD NO RIGHTS.)

4. IT MUST BE EMPHASISED THAT IT IS NOW 20 YEARS SINCE THE HUMAN RIGHTS ACT WAS INCORPORATED INTO THE SCOTLAND ACT. IT WOULD SEEM TO US THAT PUBLIC BODIES, IN SCOTLAND, IN 1998, AND THEREAFTER, WERE SERIOUSLY IGNORANT OF THE IMPLICATIONS OF HUMAN RIGHTS, AND THUS, WERE ILL PREPARED FOR THEIR RESPONSIBILITIES REGARDING HUMAN RIGHTS. PERHAPS A MORE COMPREHENSIVE PROGRAM OF EDUCATION IS STILL REQUIRED ? FOR PUBLIC BODIES, INCLUDING LOCAL COUNCILS, COUNCILLORS, BODIES CARRYING OUT WORK ON BEHALF OF GOVERNMENT, etc. ARE THERE NOW LAW OFFICERS IN EACH DEPARTMENT OF GOVERNMENT WHO ARE RESPONSIBLE FOR HUMAN RIGHTS ? (eg. IN OUR FIRST PHONE CALL TO THE SCOTTISH PARLIAMENT REGARDING HUMAN RIGHTS, WE WERE TOLD WE SHOULD FORGET ABOUT HUMAN RIGHTS AS WE WOULD NOT GET ANYWHERE RE HUMAN RIGHTS, WE WOULD BE BETTER TO LOOK AT OUR PROBLEM FROM OTHER ANGLES.)

5. FROM OUR EXPERIENCE, EVEN SOME LAWYERS AND SOME ADVOCATES REQUIRE MORE TRAINING IN HUMAN RIGHTS. (IF WE CAN JUST GIVE AN EXAMPLE HERE, A SCOTTISH JUNIOR ADVOCATE, WHO PURPORTED TO COVER HUMAN RIGHTS, SAID TO US THE FOLLOWING "YOU CANNOT EXPECT EVERYONE IN SCOTLAND TO BE TREATED THE SAME - YOU WOULD BE ALLOWED TO GO ABROAD ON HOLIDAY, A PAEDOPHILE WOULD NOT".)

6. RE ARTICLE 1, PROPOCOL 1 WHICH WAS REFERRED TO IN ONE OF THE SUBMISSIONS TO THE PPC. PERHAPS THIS IS AN EXCELLENT EXAMPLE OF WHY DETAILED EDUCATION ON HUMAN RIGHTS LAW IS SO IMPORTANT AND A CURSORY GLANCE COULD MISLEAD.

YES, GOVERNMENT CAN INTERFERE IN THIS "RIGHT" IF PRESCRIBED BY LAW, IN THE PUBLIC INTEREST AND NECESSARY IN A DEMOCRATIC SOCIETY. IT ALSO HAS A WIDE MARGIN OF APPRECIATION IN HOW TO DEAL WITH SUCH RIGHTS.

BUT

TO GIVE A PARTIAL QUOTE FROM A PREVIOUS DETAILED RESPONSE BY THE SHRC WITH REF TO OUR INITIAL PETITION, PE1263 (PE1263/D)

" ANY INTERFERENCE MUST BE JUSTIFIED AND CAN ONLY BE

JUSTIFIED IF IT IS SHOWN TO REPRESENT A FAIR BALANCE BETWEEN THE RIGHTS OF THE INDIVIDUAL AND THE GENERAL INTERESTS OF THE COMMUNITY” ALSO “A FAIR BALANCE WILL NOT HAVE BEEN STRUCK WHERE THE INDIVIDUAL PROPERTY OWNER IS MADE TO BEAR AN INDIVIDUAL AND EXCESSIVE BURDEN”

(IN OUR CASE AND THAT OF SOME OTHER DAIRY FARMERS IN OUR AREA THE RESULT OF BEING DENIED CONTROL OF OUR/THEIR OWN PROPERTY WAS DEVASTATING. SOME WERE FORCED TO GIVE UP THEIR FARMS, SOME LOST THE ABILITY TO DIVERSIFY)

WE ALSO QUOTE FROM “HUMAN RIGHTS LAW [DIRECTIONS]¹” BY HOWARD DAVIS

“IT IS, IN PRINCIPLE, HARD TO EXPLAIN A SITUATION IN WHICH AN INDIVIDUAL’S RIGHTS CAN BE RESTRICTED IN ORDER TO PROMOTE THE GENERAL WEALTH OF THE COMMUNITY SINCE ONE OF THE CENTRAL AIMS OF HUMAN RIGHTS IS TO ENSURE THAT INDIVIDUALS AND MINORITIES ARE PROTECTED AS SOCIETY PERSUES ITS COLLECTIVE INTERESTS.”

(WE SHOULD POINT OUT THAT IN OUR CASE WE ONLY WANTED TO USE OUR OWN PROPERTY, MILK QUOTA, TO RUN OUR OWN BUSINESS. LESS THAN 200 DAIRY FARMERS, IN THE UK, WERE SO SEVERLY RESTRICTED WHILE THE OTHER 36,000 WERE ALLOWED THE FREEDOM TO DO AS THEIR BUSINESS REQUIRED.)

7. CONSIDERATION OF SCOTTISH LEGAL AID COVERING TAKING CASES OF BREACH OF HUMAN RIGHTS TO EUROPE IS BEING SUGGESTED. SURELY THAT SHOULD ALWAYS HAVE BEEN A POSSIBILITY, IN EXECPTIONAL CASES.

8. SHOULD THE SCOTTISH HUMAN RIGHTS COMMISSION NOT HAVE A WIDER REMIT, SIMILAR TO NIHRC AND BE FUNDED AT THE RATE OF APPROX 10% OF ENGLAND? (TWICE PRESENT FUNDING) ENFORCEMENT POWERS RE HUMAN RIGHTS SHOULD MIRROR ENFORCEMENT POWERS RE EQUALITY.

¹ Publisher: Oxford University Press

9. REGARDING CIVIL LEGAL ASSISTANCE, OUR EXPERIENCE IS THAT THEY ARE NEITHER WILLING NOR QUALIFIED TO TAKE ON UNUSUAL OR COMPLEX CASES.

10. WE DID CONTACT OVER 50 LAW FIRMS WHO DID NOT FEEL THEY COULD TAKE ON A CASE COVERING BOTH LEGAL AID AND CIVIL HUMAN RIGHTS. BEING ELIGIBLE FOR LEGAL AID IS NOT MUCH HELP IF YOU CANNOT ACCESS A LAWYER WILLING TO TAKE ON YOUR CASE. AS LORD BINGHAM SAID

“MEANS MUST BE PROVIDED FOR RESOLVING, WITHOUT PROHIBITIVE COST OR INORDINATE DELAY, BONA FIDE CIVIL DISPUTES WHICH THE PARTIES, THEMSELVES, ARE UNABLE TO RESOLVE”

11. WHEN WE CONTACTED THE FACULTY OF ADVOCATES WE WERE TOLD WE COULD ONLY ACCESS THEM THROUGH A SOLICITOR.

FINALLY AND MOST IMPORTANTLY , WE ARE EXTREMELY CONCERNED AND SURPRISED THAT THERE DO NOT APPEAR TO BE ANY PROPOSALS TO DEAL WITH :-

a) OUR PROBLEM OF BEING UNABLE TO ACCESS A HUMAN RIGHTS LAWYER IN SCOTLAND WITH THE NECESSARY EXPERTISE TO TAKE ON OUR CASE

b) CASES FROM THE PAST.

SURELY PEOPLE WHO WERE UNABLE TO ENFORCE THEIR RIGHTS AND ACCESS JUSTICE ARE JUSTIFIED IN EXPECTING MORE?

WE SUGGEST AN INDEPENDENT TRIBUNAL SHOULD BE SET UP, PURELY TO DEAL WITH PAST INJUSTICES. THAT WOULD INSTILL SOME CONFIDENCE THAT GOVERNMENT ARE SERIOUS ABOUT TACKLING THE DEFICIT IN ACCESS TO JUSTICE IN CASES INVOLVING HUMAN RIGHTS, AND PERHAPS, POINT THE WAY TO FILLING IN SOME OF THE CURRENT GAPS IN THE PRESENT SYSTEM AND, CRUCIALLY STOP SOME OF THE POTENTIAL ABUSES IN THE FUTURE.